

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

: O R D E R :

S.B. Criminal Misc. Petition . No.129/2005.
(Shamsundar Agrawal Vs. State of Rajasthan & Another)

DATE OF ORDER : November 24th 2006

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Pushpendra Singh for petitioner.
Mr. L.R. Upadhyay, P.P. for the State .

BY THE COURT :

In the instant petition under Section 482, Cr.P.C. the petitioner seeks to challenge order dated 15.10.2003 passed by the Chief Judicial Magistrate, Rajsamand (for short, 'the trial Court' hereinafter) taking cognizance of offences under Section 7 (b), The Seeds Act, 1966, read with Section 3/7, Essential Commodities Act against the petitioner as well as order dated 18.11.2004 passed by the District & Sessions Judge, Rajsamand dismissing the revision petition filed by the petitioner.

The petitioner is claiming relief on the ground that he is working as Deputy Managing Director of Mahyco Seeds Ltd., having its registered office in Mumbai. The company in which the petitioner is Deputy Managing Director is engaged in the business of production, processing and marketing of high quality seeds for the farming community of India since 1964. The relevant facts of the case are that on 12.06.2003, complainant non-petitioner No.2 Bhupendra Singh Rathore, Seeds Inspector & Agriculture Officer, Rajsamand made a surprise check at M/s

Mewar Krishi Kendra, Kankroli, owned by Bherulal Kumawat and took three samples of Jowar type MSH-51 Lot No.QRB-1090358 and Jowar type MRS-4094 Lot No.RRA-100101 produced by Mahyco Seeds Ltd. and Maize (Makka) type Mani Kanchan having its Lot No.OCT-02-20-05-06 produced by R.M.S.C., Jaipur as per Seeds Act, 1966 under Section 15 and Seeds (Control) Order, 1983. He took three samples of the each commodity which were sealed. Out of three samples of seeds, the officer retained one sample each with the owner of M/s Mewar Krishi Kendra, Kankroli and carried with him two samples for testing.

The prosecution case is that the said samples were sent to the Government Seeds Testing Laboratory, Jaipur on 16.03.2003. The testing report was submitted vide letter No.816-17 dated 14.07.2003 in which the germination was found only 49%, instead of the required standard of 75% as per the Seeds Act. The non-petitioner No.2 sent a show cause notice dated 21.07.2003 to M/s Mewar Krishi Kendra, Holithada, Bhilwara Road, Kankroli and M/s Mahyco Seeds Ltd., jalna, maharashtra which was received to the company on 30.07.2003.

Explanation was given by the M/s Mahyco Seeds Ltd. through its marketing and sales In-charge of Rajasthan, Sameer Agrawal vide letter dated 08.08.2003. In their reply, the reasons for less germination were given and a request was also made for retest of the seeds in Central Seeds Testing Laboratory.

Thereafter, straightway without considering the prayer for retest, on 15.10.2003, the complainant non-petitioner filed a complaint under Section 7(b) of the Seeds Act, 1966, read with Section 3/7 of the Essential Commodities Act, 1955 before the trial Court. The said complaint was

filed against four persons including the petitioner. Cognizance upon the said complaint was taken by the learned trial Magistrate on the same day i.e., 15.10.2003 and against that order the petitioner preferred revision petition before the learned Sessions Judge, Rajsamand which was dismissed by order dated 18.11.2004.

The present petition has been filed on the grounds inter alia that order of cognizance is bad in law inasmuch as it is against facts and circumstances of the case and there is no sufficient ground for initiating proceedings against the petitioner. In the petition, it is contended that the petitioner is working as deputy Managing Director of the company and the allegations set out in the complaint do not even make out any case against the petitioner in his personal capacity. It is contended that order of cognizance deserves to be quashed only on account of the fact that the allegations, on their face, do not constitute any offence. It is submitted that even if entire allegations are taken into account it does not disclose any offence against the petitioner and it is totally abuse of process of law and in the absence of clear and specific allegations against the Director, who is not responsible for the conduct of the business of the company, the impugned order deserves to be quashed.

Learned counsel for the petitioner contended that M/s Mewar Krishi Kendra, Kankroli is not an authorised agent of the company. Likewise, there is no allegation that the petitioner is responsible for the conduct of the business of the company. Further, it is vehemently contended that the State of Rajasthan, in the Department of Agriculture, before issuing licence for marketing seeds, has granted licence to the company with effect from 26.09.2000 to 25.09.2003 and was further renewed for a

period of three years with effect from 26.09.2003. He contended that the name of the responsible person was specifically mentioned in the licence and as per the licence so issued Mr. Rajendra P. Mathur is responsible and authorised for the conduct of the business of the company and said Mr. Rajendra P. Mathur is also made accused No.4 by the complainant. It is submitted by learned counsel for the petitioner that these facts are not in dispute, therefore, the person who is responsible for the conduct of the business of the company has already been made accused and thus there is no case made out against the petitioner who is working as Deputy Managing Director of the company but, strangely enough, he has been implicated as accused No.5 though the petitioner has no direct concern with the conduct of the business of the company and, more so, because the petitioner is stationed at a far off place Jalna (Maharashtra) whereas the incident has allegedly taken place Kankroli (Rajasthan). It is submitted that Rajendra P. Mathur is authorised to do business on behalf of the company in the state of Rajasthan and, therefore, in the facts and circumstances, the complaint as such is not maintainable against the petitioner.

Learned counsel for the petitioner argued that, in the present case, the petitioner is not directly in-charge of the marketing affairs of the company and cannot be held responsible for vicarious liability for the alleged offence. It is vehemently argued that according to the complaint there is no allegation against the petitioner and, knowing it well that Rajendra P. Mathur is authorised representative of the company and licence has been issued by the State Government on behalf of the company in his favour, the complainant has only mala fide implicated the

petitioner. He argued that in these facts and circumstances the trial Court has committed illegality in taking cognizance of the alleged offence against the petitioner.

Learned counsel for the petitioner submitted that the company requested the complainant non-petitioner for getting the seeds' samples re-tested in the Central Seeds Testing Laboratory but the request was not considered and, in violation of the provisions of the Seeds Act, the learned trial Court took cognizance illegally against the petitioner. It is submitted that the company has been supplying the seeds to the farmers all over India for years together but not a single complaint has been received, therefore, in such doubtful circumstances, cognizance of alleged offence taken by the trial Court is not justified and proper.

Learned counsel for the petitioner submitted that in reply to the show cause notice it was specifically mentioned that the disputed seeds' lot was tested by the Company's Quality Control department and the germination was found proper and the said test-report dated 26.05.2005 was also brought to the notice of the Department by company's representative Samir Agrawal and a request was made that the seeds tested at Jaipur in which germination was found only 49% the report is incorrect but neither the fact was verified nor the reply was considered in proper manner. Learned counsel for the petitioner contended that the complainant has filed the complaint in a rush-haste manner without considering the reply filed by the company's representative. He invited attention of the Court towards Section 21 of the Seeds Act, 1966 which reads as follows :

“21.Offences by companies:-(1) Where an offence under

this Act has been committed by a company, every person who at the time of the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :-For the purposes of this section, -

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

With reference to the provisions of the aforequoted section, it is contended by learned counsel for the petitioner that where an offence under the Act is committed by a company every person who at the time of the commission of the offence was in-charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty for the offence and shall be liable to be proceeded against and punished accordingly. He pointed out that by virtue of the proviso to sub-section (1) it is provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed

without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

Referring to the provisions contained in sub-section (2) of Section 21, the learned counsel pointed out that where an offence under the Act is committed by a company and it is proved that the offence has been committed with their consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or officer of the company shall be deemed to be guilty of that offence; meaning thereby, there must be a prima facie case made out from the allegations at the time of lodging the complaint against the person who is said to be the in-charge of the business of the company. Learned counsel for the petitioner contended that from the perusal of the complaint it reveals that not a single whisper or any allegation is made in the complaint against the petitioner that he is responsible for any type of business of the company; more particularly, when the samples were taken from the firm which is not even authorized agency of the company and, admittedly, the State Government has issued the licence in favour of Shri Rajendra P. Mathur, senior executive of the company who is of the accused in the present case then there is no question for implicating the petitioner in the case. He emphasized that according to the relevant section itself only those persons who are responsible for the business of the company are liable to be prosecuted. It is urged that the entire ingredients in the complaint are absent qua the petitioner and the petitioner cannot be implicated and forced to face the trial.

Per contra, the learned Public Prosecutor for the State submitted

that it should be presumed that being the Deputy Managing Director the petitioner was in-charge of the affairs of the company for the purpose of Section 21 of the Act and, in case it is presumed that the alleged offence is committed with consent or connivance or on account of neglect, as contemplated by sub-section (2) of Section 21 of the Seeds Act, it cannot be said that there is no sufficient ground to proceed against the petitioner.

I have considered the rival submissions and also perused the orders impugned.

Both the revisional Court as well as trial Court, in the impugned orders, did not consider the question how the petitioner who is Deputy Managing Director of the company is responsible for the conduct of the business. The person in whose name the licence has been issued is already arrayed accused before the Court as representative of the company. It may be noted that the trial Court, upon consideration of the complaint, for the purpose of taking cognizance is necessarily required to sift the ingredients of allegations for concluding that offence is made out. From the perusal of the afore-quoted section, it is obvious that the person in-charge of the affairs of the business and responsible for the commission and omission in the conduct of the business of the company alone can be held guilty. It is not the intention of the law, as is obvious from Section 21 of the Seeds Act, 1966, that every director, manager, secretary or officer of the company shall be deemed to be guilty of the offence, unless it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of such director, manager, secretary or officer of the company. The proviso to sub-section (1) is quite specific in its terms and bars liability to

punishment under the Act if the person proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence. The term “all due diligence” interpretatively inheres the meaning that such due diligence is expected of the person in-charge of the affairs of the business of the company. In the instant case, on the facts and in the circumstances, it cannot be said that the Deputy Managing Director is thus liable for the commission of the offence in respect of which the authorized person viz., the company's senior executive Shri Rajendra P. Mathur in whose favour the license is issued by the State Government under the provisions of the Act is already arrayed accused in the case. In the facts and circumstances of the case, in my considered opinion, the cognizance of offence taken against the petitioner is totally unwarranted.

In **Sham Sunder & Others Vs. State of Haryana, (1989) 4 SCC 630**, the Supreme Court while considering the provisions of the Essential Commodities Act, 1955, insisted that the person entrusted with business of firm and responsible for conduct of business alone is liable to be prosecuted and not all partners. According to their Lordships of the Supreme Court, the initial burden lies on prosecution to prove that accused was responsible for carrying on business and was during the relevant time responsible for carrying on business and was in-charge of business.

In the present case, perusal of the complaint itself reveals that there is no allegation aimed at the petitioner nor the complainant non-petitioner has made out any liability of the petitioner for commission of the alleged offence. I am further of the view that the trial Court committed

serious illegality in not considering the liability of each of the accused while taking cognizance of the alleged offence more so when the relevant provisions specifically rest upon the liability to be shown before the person is arraigned for the commission of the offence under the Act.

In **M/s Rallis India Ltd & Others Vs. State of Rajasthan & Others, 1998 (Vol.3) W.L.C. (Raj.) 373**, this Court while considering mechanically identical provisions of Section 33 of the Insecticides Act, expressed the following opinion :

“A bare perusal of Section 33 of the Act shows that this second does not make it mandatory that the Directors, Managers, Secretaries and other officers of the company shall be presumed to be persons in-charge of the company or responsible for the conduct of the business of the company within the meaning of this section. In fact, Section 33 clearly provides that no person shall be deemed to be responsible for the offences committed by the company unless it is proved that he was in-charge or was responsible to the company for the conduct of the business of the company at the time the offence was committed. In the absence of any rule of law making it mandatory on the part of the Court to presume that all the Directors, Managers, Secretaries and other officers of a company are responsible for the offence committed by the company, the question whether a person is or is not liable for the offence committed by the company must be regarded as a question of fact, and therefore, the presumptions have to be drawn in accordance with the provisions contained in Section 114 of the Evidence Act after taking into consideration all relevant facts having a bearing on the question.”

It is worthwhile to note the provisions of Section 33 of the Insecticides Act which reads as under :

“33.Offences by companies-(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was incharge of, or was responsible to the company for the conduct, of the business of, the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purpose of this section,

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.”

In the afore-cited case, this Court held that there was no sufficient ground to proceed against the non-petitioner Nos. 2 to 6 and therefore, the issue of process against the non-petitioner Nos. 2 to 6 by the impugned order was impermissible and therefore the initiation of proceedings against the non-petitioners No.2 to 6 by issuing summons against them amounts to abuse of the process of the court.

It is also pertinent to note the observations of their Lordships of the Supreme Court in the judgment reported in **(2006) 7 SCC 296**, wherein on the efficacy of the inherent jurisdiction of this Court under Section 482, Cr.P.C., it has been observed that inherent jurisdiction of the High Court can be exercised to deliver real and substantial justice. It is further made

clear that High Court can even exercise the jurisdiction suo moto in the interest of justice. It is true that such power cannot be exercised while exercising power under other jurisdiction like appellate or revisional jurisdiction; but, while exercising inherent jurisdiction to prevent abuse of process of court in respect of substantive as well as procedural matters, proceedings can be quashed.

According to challan papers including the complaint, it is not made out as to what allegations are there to arrive at the conclusion that the petitioner being the Deputy Managing Director of the company is responsible under Section 21 for the offences allegedly committed by the company. The learned trial Court as well as the revisional Court appear to have taken superficial meaning of the law that every director, manager or officer of the company is also responsible and liable for the offences committed by the company. It appears more so because the trial Court has not assigned any reasons at the time of taking cognizance as to how the petitioner being the Deputy Managing Director of the company is responsible for the conduct of the business of the company. In view of the fact that the person in-charge and in whose favour, after authorisation by the company, the State Government issued licence has already been arrayed accused in the case.

The contention of the learned Public Prosecutor cannot be accepted that being the Deputy Managing Director the petitioner was responsible for the conduct of the business, without there being any evidence on record. This is not the law. The terms of Section 21 of the Seeds Act are clear in meaning and require an enquiry to be made before fastening liability for prosecution for commission of an offence under the

Act. Under Section 21, the person sought to be prosecuted for commission of alleged offence under the Act cannot be held vicarious and personal liability must be established before prosecution of such person. The provisions of Section 21 of the Seeds Act do not rivet around vicarious liability. The plain interpretation of the statute leaves no manner of doubt that the person sought to be prosecuted must himself be liable for commission or omission of an act.

As a result, this petition is allowed. The impugned order dated 15.10.2003 passed by the trial Court qua the petitioner is quashed and set aside. Accordingly, order dated 18.11.2004 passed by the revisional Court also stands set aside. It is, however, made clear that nothing hereinabove stated shall preclude the complainant non-petitioner Seeds & Agriculture Inspector from conducting further inquiry to find out who is/are responsible under Section 21 nor it shall preclude the trial Court from issuing process under Section 319, Cr.P.C. against any such person shown to be responsible for commission of the alleged offence, in case, the facts and circumstances justify the course.

(Gopal Krishan Vyas) J.

Ojha, a.